



Richard A. Edlin
Tel. (212) 801-6528
edlinr@gtlaw.com

The request is rejected! What the Court did on the phone conference should have been done in open court, but we do not have to accommodate the public's curiosity. As to talking to the press about public policy events, the parties should be guided by the Code of Conduct as related to them in ethics concerning the good behavior of attorneys.

January 20, 2012

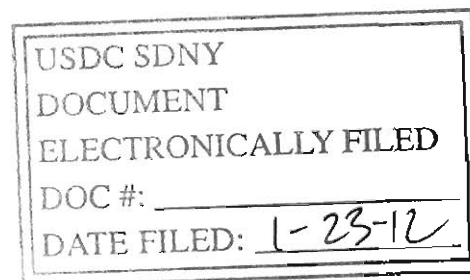
So called

Paul Muth
USDC

By Fax

Honorable Paul A. Crotty
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: **Syncora Guarantee, Inc. v. J.P. Morgan Securities LLC**
No. 09-cv-3106 (PAC) (S.D.N.Y.)



Dear Judge Crotty:

We write to bring a somewhat unusual and troubling situation to the Court's attention in an attempt to get ahead of it. Last evening, a reporter who has in the past written about potentially non-public developments relating to this case published an article online reporting on the issue of whether plaintiff's counsel would have to turn over signed third-party affidavits and the hearing before Your Honor yesterday afternoon on that issue. The information as to the Court's oral ruling could only have come from plaintiff's counsel, given that the Court's ruling was not available anywhere publicly as of 6pm Thursday evening. We have attached the article, which we will not seek to characterize and the Court will of course come to its own conclusions. The purpose of this letter is not to object to the inaccuracies in the article or its misplaced slights to our firm, to Your Honor or to the Judiciary. But we do object to plaintiff's counsel's repeated use of reporters such as this one to generate articles like this. We believe that the appropriate place to try this case is in the Court, not through the press, and are concerned that if this is not addressed now, it will get worse. Accordingly, we would appreciate the Court directing plaintiff's counsel to refrain from this activity in the future.

We thank the Court for its attention to this matter.

Respectfully submitted,

GREENBERG TRAURIG, LLP

By

Richard A. Edlin
Richard A. Edlin

RAE/ng

cc: Erik Haas, Esq.
Robert A. Sacks, Esq.
Darrell S. Cafasso, Esq.
Eric N. Whitney, Esq.

MEMO ENDORSED

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Thu 19 Jan 2012

JP Morgan Attempts to Scare Whistleblowers Testifying Against Bear Mortgage Traders

Posted by Teri Buhl under [Bank Fraud](#)
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JP Morgan's lawyers are once again using intimidation tactics to scare whistleblowers in the Bear Stearns mortgage fraud machine lawsuits. Lawyers at Greenberg Traurig LP filed a public letter two days ago with Judge Crotty in New York State Supreme Court outing the name of a confidential whistleblower Ambac, Syncora & Assured Guarantee has secured to testify against the Bear Mortgage team run by Tom Marano, Jeff Verschleiser, and Mike Nierenberg. The JPM/Bear lawyers have also attempted to see copies of whistleblower affidavits before tomorrow's big deposition in an apparent move to scare people coming forward saying they could be violating confidentiality agreements they signed when they left the third party due diligence firms Bear hired to help orchestra their alleged scheme.

Confidentiality agreements are often used when offering a severance to employees leaving financial firms so they can't talk about anything bad they saw happen at the company. The worry for whistleblowers is those firms could sue to take back pay if the ex employees do things like tell the public about financial crimes/violations their clients asked them to commit—although we have yet to see a finance firm actually pull a dickhead move like this and file a real suit.

I previously reported this fall about 30 whistleblower from Bear's wholly owned mortgage servicing firm, EMC, and outside due diligence firms, Watterson Prime and Clayton have now come forward in an amended complaint filed by Paterson Belknap Webb & Tyler for three of their monoline clients (mortgage bond insurers) suing JPM/BEAR for billions. These whistleblowers detail a 'Bear Don't Care' attitude towards packaging billions of residential securities sold to pension funds and other institutional investors that blew up and lost buyers billions and billions of dollars. Court documents show this extra layer of independant due diligence for investors was nothing more than a sham to create a false sense of confidence in the Bear rmbs product.

Some of the Watterson Prime ex-staffers have said, “ Watterson's review was nothing more than a

rubber stamp approval to satisfy defendants' (the Bear Mortgage Team) objective of purchasing a large volume of loans for securitization...the vast majority of the time the loans that were rejected [by Watterson] were still put in the pool and sold."

American Banker wrote last month Jamie Dimon told investor in early 2011 they'd been sued on \$54 billion of mortgage securities but he thought the cases would be hard to prove. Humm wonder if he's thinking that now?

Today PBWT's lead attorney on the case, Erik Haas, filed a pretty interesting response to JP Morgan's move to scare witnesses and label PBWT as using 'ambush litigation tactics'.

Haas reminds the court testimony obtained before a deposition is attorney work product and the defense doesn't get to see it before they get to court and cross examine – netnet this is lawyering 101 and JP Morgan knows this. So why are they filing a public letter naming the witness and going on and on about violations of a confidentiality agreement they don't even know if the witness even had? If these whistleblowers are currently employed at another finance firm it might make it really uncomfortable for them. Which why they were not named in any of the latest public documents filed by PBWT but have now been exposed by JP Morgan.

Haas also reminds the court in footnote number two of today letter:

Defendants concede that a due diligence firm made an application to Justice Bransten for the production of affidavits obtained by plaintiffs in MBIA Ins. Corp. v. Countrywide Home Loans, Inc., Index No. 08-602825 (N.Y. Sup. Ct.). But defendants fail to point out that, on January 17, 2012, the court denied the due diligence firm's request absent further briefing on the issue. Further, in light of a whistleblower's testimony that the due diligence firm was attempting to stifle truthful testimony by its former employees by invoking confidentiality agreements that the former employees may have signed (and other means), the court noted that it "is troubled by the allegations of impropriety in requesting or pressuring Clayton [the due diligence firm] witnesses not to speak to third parties [i.e., monoline insurers] regarding their employment at Clayton. The court has full confidence in the attorneys that come before it, and trusts that impropriety is not, and will not be, occurring."

Additionally, Haas told the judge JP Morgan is using an ex Ambac employee as their defense expert witness and claimed privilege of that testimony before court (which PBWT can't and hasn't asked to see) so on what planet do they think they can get PBWT's witness testimony before court.

The legal gamesmanship of JPMorgan attorneys, who apparently are getting worried about what will come out in these depositions if they are pulling these kinds of moves, is becoming more and more apparent. Actions that lead to top housing analyst Mark Hanson writing a scary research note two months ago warning on the billions of RMBS putback litigation JP Morgan could have to pay out.

What's also important to realize it's the monoline lawyers at PBWT are deposing their own damn

witnesses before a trial starts. They don't have to do this. So tomorrow's depositions reads to me like the monolawyer are pretty damn confident about their fraud evidence against the Bear traders like Verschleiser, Marano, Nierenberg, that they don't fear showing JP Morgan their cards before trial. You know just in case the banking giant decides it's about time they stop pretending they don't have serious litigation risk from buying Bear's crap and settle.

UPDATE 6pm: Judge Crotty ordered the whistleblowers affidavit to be released to JP Morgan tonight which means the defense has a few hours to get an extra edge on tomorrow's deposition. I hope this means now that this witness statements are not a protected plaintiff's work document that the whistleblowers testimony should be available to the press and public. But then JP Morgan is pretty good at getting judges to hide the truth for a while now.

Tags: Bear Stearns RMBS Fraud Lawsuits, Greenberg Traurig plays dirty in rmbs securities fraud case, How do Goldman clients trust Verschleiser?, Is JP Morgan regretting not settling sooner?, Jeff Verschleiser RMBS fraud case moves forward, JP Morgan lawyers are getting desperate, Mike Nierenberg, PBWT Erik Haas, Teri Buhl reports on JP Morgan whistleblower scare tactics, Tom Mamo

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January 2012

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Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036 6710 /12 336 2000 fax 212 336 2222 www.pbwt.com

January 23, 2012

Enk Haas
Partner
(212) 336-2117
Direct Fax (212) 336-2386
ehaas@pbwt.com**By Fax**The Honorable Paul A. Crotty
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007**Re: *Syncora Guarantee Inc. v. EMC Mortgage Corp.*,
No. 09-CV-3106 (PAC) (S.D.N.Y.)**

Dear Judge Crotty:

We write in response to the correspondence submitted by EMC's counsel on Friday, January 20, 2012. The letter *faulsely* asserts that our firm disclosed non-public information to the press recited in an attached article. That simply is not true.

EMC's correspondence attaches a printout from an internet "blog" authored by Teri Buhl, a reporter for the *Atlantic* and other major on-line and print periodicals. EMC suggests the information in the blog came from non-public information disclosed by our firm. Quite to the contrary, it was EMC's counsel that afforded Ms. Buhl access to the information recited in the blog. The initial version of the blog was generated early on Thursday, *before* the teleconference with Your Honor regarding EMC's request for disclosure of affidavits provided to us by a whistleblower. Ms. Buhl referenced the two letters the parties submitted to Justice Ramos and this Court concerning that request (and provided direct links to the letters available on the state court's electronic docket). The factual substance of the article that is not favorable to EMC relates to the non-party whistleblower testimony cited in our letter that *already was in the public domain*, as we noted in a prior letter to Your Honor.¹ In addition, our letter made general reference to the contemplated testimony of the whistleblower who testified on Friday, which was necessary to respond to EMC's demand for the whistleblower's affidavit. Ms. Buhl presumably gained access to EMC's and our letters because *EMC's counsel first filed its correspondence on the public electronic filing system with the state court.*² We therefore filed our response in the

¹ See Letter from Erik Haas to Judge Crotty, dated January 19, 2012, referencing the disclosures in the public pleadings (p. 1), in the press and before the Financial Crisis Inquiry Commission (fn. 1).

² EMC's motion to compel production of the affidavit can be accessed at: <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=tirVQcwp3WvoV8G+D1N5sA==&system=prod>.

January 23, 2012
Page 2

same manner.³ To be absolutely clear – neither our firm nor our clients provided that correspondence to Ms. Buhl, and the rhetoric in the article is her own.

EMC then goes on to assert that the “information as to the Court’s oral ruling could only have come from plaintiff’s counsel given that the Court’s ruling was not available anywhere publicly as of 6pm Thursday evening.” In fact, the Court’s ruling was publicly available via a filing made at 6:03 pm *by EMC* on the publicly-available state court electronic filing system. Immediately after the call with Your Honor, EMC submitted a letter to Justice Ramos (attached), disclosing that Your Honor had ordered us to produce the affidavits. As the automatic notification confirms (attached), EMC’s correspondence was posted as of 6:03 pm on Thursday evening – which corresponds with the stated “6 pm” update on the blog addressing Your Honor’s decision (recited at the bottom of the article attached to Mr. Edlin’s letter).⁴ Again, Ms. Buhl’s blog refers to information made publicly available *by EMC*.

EMC’s letter further states that the “reporter has in the past written about *potentially* non-public developments relating to this case,” but EMC fails to cite any non-public disclosures relating to this case. This tellingly qualified statement underscores that EMC has *no basis to assert or insinuate* that any non-public information has been disclosed by this firm or its clients to the reporter. It is true that the reporter of the blog has in the past written articles providing information regarding EMC’s wrongful conduct derived from *other* EMC whistleblowers, including those who contributed to a revealing documentary concerning EMC’s fraudulent mortgage loan practices.⁵ Those whistleblowers were *not* furnished or identified by our firm or our client. Nor did we participate in the production of the documentary, which has long been publicly available.⁶

Next, EMC makes the wholly unfounded assertion that “plaintiff’s counsel [have engaged in] repeated use of reporters such as this one to generate articles like this.” EMC cites no support for that proposition *because none exists*. EMC’s claim is entirely unsupported and false. There is ample evidence of EMC’s and its affiliates’ egregious misconduct in the public domain (including testimony before and a report issued by the Financial Crisis Inquiry Commission). EMC is flatly wrong to assert that the articles have resulted from the disclosure of confidential information by this firm or its clients. That simply has not occurred.

The motivation for EMC’s letter is apparent. First, EMC improperly attempts to give Your Honor the false impression that our firm is somehow responsible for (what EMC

³ Our correspondence in response to EMC’s motion can be accessed at: <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=tirVQewp3Wtep/nwWuScLw==&system=prod>.

⁴ EMC’s correspondence relaying Your Honor’s ruling to Justice Ramos can be accessed at: <https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=tirVQewp3WvO8bTKbPEbuQ==&system=prod>.

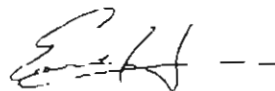
⁵ See, e.g., Teri Buhl, *More Corruption: Bear Stearns Falsified Information as Raters Shrugged*, Atlantic, May 14, 2010, available at <http://www.theatlantic.com/business/archive/2010/05/more-corruption-bear-stearns-falsified-information-as-raters-shrugged/56753/>; Teri Buhl, *E-mails Suggest Bear Stearns Cheated Clients Out of Billions*, Atlantic, Jan. 25, 2011, available at <http://www.theatlantic.com/business/archive/2011/01/e-mails-suggest-bear-stearns-cheated-clients-out-of-billions/70128/>.

⁶ See Blue Ship Films, *Confidence Game*, http://www.bluechipfilms.com/confidence_game/.

describes as) the "misplaced slights . . . to Your Honor [and] to the Judiciary." Nothing could be further from the truth. Second, EMC seeks to divert attention from the fact that the testimony the whistleblower gave on Friday (as well as the testimony provided by a Georgia law enforcement officer on Saturday) confirmed the statements in the affidavits that EMC knowingly misrepresented its due diligence process, which was fundamentally and deliberately deficient

EMC's vague request is based upon an erroneous foundation and, therefore, we respectfully request that it be denied.

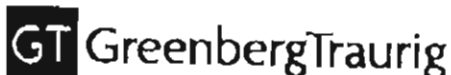
Respectfully submitted,



Erik Haas

cc: Counsel for Defendants
Richard Edlin, Esq. (Greenberg Traurig, LLP)
Robert A. Sacks, Esq. and Darrell S. Cafasso, Esq. (Sullivan & Cromwell LLP)

Attachments



Richard A. Edlin
Tel. (212) 801-6528
edlinr@gtlaw.com

January 19, 2012

By Fax and Electronic Filing

Honorable Charles E. Ramos
Supreme Court, New York County
60 Centre Street
New York, New York 10007

**Re: *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.*
Index No. 650421/2011**

Dear Justice Ramos:

We are counsel for Defendants in the above matter. We write further to our letter of January 18, 2012 concerning our request that Plaintiff's counsel produce affidavits of non-party witnesses whom Plaintiff subpoenaed for deposition. Since this issue also concerns a matter pending in United States District Court for the Southern District before the Honorable Paul A. Crotty (*Syncora Guarantee, Inc. v. EMC Mortgage Corp.*, No. 09 cv 3106 (PAC)), as you know we also filed our letter with Judge Crotty. Today Judge Crotty directed Plaintiff's counsel to produce the affidavits on the grounds that there was no protectable privilege or work product once the statements were sworn to and signed by a third party.

We thank the Court for its attention to this matter.

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 
Richard A. Edlin

RAE/ng

cc: Erik Haas, Esq.
Robert A. Sacks, Esq.
Darrell S. Cafasso, Esq.
Frank Morreale, Esq. (Counsel for LPS Credit Risk Solutions, LLC, custodian of certain records of Watterson Prime, LLC)

LaForge, Nicholas (x2171)

From: NewYorkEF@courts.state.ny.us
Sent: Thursday, January 19, 2012 8:04 PM
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Subject: NYSCEF, New York Confirmation - LETTER/CORRESPONDENCE 650421/2011 Ambac Assurance Corporation - v - EMC Mortgage Corporation et al



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COMMANDEUR, NICOLAS - ncommandeur@pbwt.com
Cafasso, Darrell Scott - cafassod@sullcrom.com
Castleman, David Allen - castlemamd@sullcrom.com
DEVANEY, WILLIAM H - whdevaney@venable.com
EDLIN, RICHARD A - edlinr@gtlaw.com
FORLENZA, PHILIP R - prforlenza@pbwt.com
FRIEDMAN, STACEY RUBIN - friedmans@sullcrom.com
GOODSTINE, SARAH E - sgoodstine@pbwt.com
HAAS, ERIK - ehaas@pbwt.com
HELLER, CAROLINE J - hellerc@gtlaw.com
HOLLEY, STEVEN L - holleys@sullcrom.com
KRUGLAK, SETH M - kruglaks@gtlaw.com
MALY, HEATHER L - hlmaly@venable.com
NELLES, SHARON L - nelless@sullcrom.com
O'TOOLE, EDMUND M - emotoole@venable.com

PAREKH, NIRAJ J - niparekh@pbwt.com
SACKS, ROBERT A - sacksr@sullcrom.com
SILVERMAN, WILLIAM C - silvermanw@gtlaw.com
WHITNEY, ERIC N - whitneye@gtlaw.com





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Judge: Charles Edward Ramos

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 RICHARD A EDLIN
 212-801-9200
 212-801-6400
 edlinr@gtlaw.com

 MetLife Building 200
Park Avenue New York,
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